

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-150171-06

Date: JANUARY 09, 2008

Decedent	=
Spouse	=
Country	=
Date 1	=
Date 2	=
IRA 1	=
IRA 2	=
IRA 3	=
Insurance Policy 1	=
Insurance Policy 2	=

Dear :

This is in response to your letter dated December 4, 2007, and prior correspondence, requesting an extension of time under section 301.9100-1 of the Procedure and Administration Regulations to make a Qualified Domestic Trust (QDOT) election with respect to certain property passing to Spouse from Decedent's estate as well as an extension of time to assign certain property to a QDOT.

According to the facts submitted, Decedent, a United States citizen, died testate on Date 1, survived by his spouse, Spouse, a resident of the United States and a citizen of Country. Spouse is not a United States citizen.

During his lifetime, Decedent and Spouse had established and funded a revocable inter vivos trust (Family Trust). On Decedent's death, the Family Trust was to

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be divided into three separate trusts. The Survivor's Trust (Trust A), is to be funded with Spouse's share of the community property. The Marital Trust (Trust B), a marital trust intended to qualify as a qualified domestic trust (QDOT), is to be funded, pursuant to a formula, with the minimum amount necessary to reduce the estate tax to zero taking into account any property that passes outside the terms of the Family Trust to the surviving spouse that qualifies for the marital deduction. The Residuary Trust, Trust C, is to be funded with the balance of the trust property.

Upon Decedent's death, interests in certain joint property, IRAs 1, 2, and 3, and the proceeds of Insurance Policies 1 and 2, that were included in the Decedent's gross estate, passed directly to Spouse. Estate hired CPA to prepare Form 706, which was timely filed on Date 2. On Schedule M of Form 706, the estate listed a portion of the Family Trust passing to Trust B under the formula as qualifying for the Marital Deduction. In addition, the estate listed IRAs 1, 2, and 3, and the proceeds of Insurance Policies 1 and 2 as passing to Spouse and qualifying for the marital deduction. Certain joint property that passed to the Spouse by operation of law was not listed. In addition, Spouse was not advised to assign the IRAs and insurance proceeds that passed outright to Spouse to Marital Trust B, the QDOT, as is required under section 2056A.

The Estate requests an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make a QDOT election with respect to the Decedent's interest in the joint property and to assign the Decedent's interest in the joint property, and the proceeds of Insurance Policies 1 and 2 to Trust B. In addition, an extension is requested to comply with the requirements of section 20.2056A-4(c) of the Estate Tax Regulations with respect to Decedent's interest in IRAs 1, 2 and 3.

Section 2056(a) provides that, for purposes of the tax imposed by section 2001, the value of the taxable estate is to be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that passes or has passed from the decedent to the surviving spouse.

Section 2056(d)(1)(A) provides that if the surviving spouse is not a citizen of the United States, no deduction shall be allowed under section 2056(a). However, section 2056(d)(2)(A) provides that section 2056(d)(1)(A) will not apply to any property passing to the surviving spouse in a qualified domestic trust (QDOT).

Under section 2056A, in order for a trust to qualify as a QDOT: (1) the trust instrument must require that at least one trustee of the trust be an individual citizen of the United States or domestic corporation and that no distribution other than a distribution of income may be made from the trust unless a trustee who is an individual citizen of the United States or a domestic corporation has the right to withhold from the

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distribution the additional estate tax imposed by section 2056A(b)(1) on the distribution; (2) the trust must meet the requirements that are prescribed under Treasury regulations to ensure the collection of the tax imposed by section 2056A(b); and (3) the executor must make the election prescribed by section 2056A(d) to treat the trust as QDOT.

Under section 2056(d)(2)(B) and section 20.2056A-4(b)(1), if an interest in property passes outright from a decedent to a noncitizen surviving spouse either by testamentary bequest or devise, by operation of law, or pursuant to an annuity or other similar plan or arrangement, and such property interest otherwise qualifies for a marital deduction except that it does not pass in a QDOT, then solely for purposes of section 2056(d)(2)(A), the property is treated as passing to the surviving spouse in a QDOT if the property interest is assigned to a QDOT under an enforceable and irrevocable written assignment made on or before the date on which the return is filed and on or before the last date prescribed by law that the QDOT election may be made.

Section 2056A(e) provides that the Secretary shall prescribe regulations under which there may be treated as a qualified domestic trust any annuity or other payment which is includible in the decedent's gross estate and is by its terms payable for life or a term of years.

Section 20.2056A-4(c) prescribes rules for implementing §2056A(e) in the case of certain nonassignable annuities or other arrangements payable under retirement plans.

Under §20.2056A-4(c)(1), a nonassignable annuity or other arrangement means a plan, annuity, or other arrangement (whether qualified or not under part I of subchapter D of chapter 1 of subtitle A of the Internal Revenue Code) that qualifies for a marital deduction but for §2056(d)(1)(A), and whose payments are not assignable or transferable to a QDOT under either federal law, state law, foreign law, or the terms of the plan or arrangement itself. Under this section, a surviving spouse's interest as beneficiary of an individual retirement account described in section 408(a), although assignable under that section, is considered to be a nonassignable annuity or other arrangement eligible for the procedures described in the section at the option of the spouse. In the case of an individual retirement account that the spouse elects to treat as nonassignable, the property passing under the plan from the decedent is treated as otherwise meeting the requirements §20.2056A-2 (pertaining to general requirements, qualified marital interest requirements, statutory requirements, and requirements to ensure collection of the tax) if the requirements of either §20.2056A-4(c)(2) or (3) are satisfied. Thus, the property will be treated as passing in the form of a QDOT, notwithstanding that the spouse does not irrevocably transfer or assign the property to the QDOT. See also, §20.2056A-4(b)(7)(iii).

The requirements of §20.2056A-4(c)(3) will be satisfied if:

(i) The noncitizen surviving spouse agrees to roll over and transfer, within the time prescribed in §20.2056A-4(c)(7)(i), the corpus portion of each annuity payment to a

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QDOT, whether the QDOT is created by the decedent's will, the executor of the decedent's estate, or the surviving spouse;

(ii) A QDOT for the benefit of the surviving spouse is established prior to the date that the estate tax return is filed and on or prior to the last date prescribed by law that the QDOT election may be made;

(iii) The executor of the decedent's estate files with the estate tax return the Information Statement described in §20.2056A-4(c)(5);

(iv) The executor files with the estate tax return the Agreement To Roll Over Annuity Payments described in §20.2056A-4(c)(7); and

(v) The executor makes the election under §2056A(a)(3) and §20.2056A-3 with respect to the nonassignable annuity or other payment.

For purposes of determining the corpus portion of a nonassignable annuity, §20.2056A-4(c)(4) provides that the corpus portion is the corpus amount of the annual payment divided by the total annual payment. The corpus amount is determined by dividing the total present value of the annuity by the expected annuity term.

Under section 2056(d) and section 20.2056A-3(a), the election to treat a trust as a QDOT must be made on the last federal estate tax return filed before the due date (including extensions of time to file actually granted) or, if a timely return is not filed, on the first federal estate tax return filed after the due date. The election, once made, is irrevocable. No election may be made if the return is filed more than 1 year after the due date of the return.

Under § 301.9100-1(c) of the Procedure and Administration Regulations, the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

Based on the facts submitted and representations made, we conclude that the executor made a valid QDOT election with respect to decedent's interest in IRAs¹, 2 and 3 and the proceeds of Insurance Policies 1 and 2 that were listed on Schedule M of the Estate's timely filed Form 706. We also conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, an extension of time until 60 days of the date of this letter is granted to make the QDOT election with respect to the joint property that was not listed on Schedule M. In addition an extension of time until the date that is 60 days after the date of this letter is granted to assign the joint property and Decedent's interest in the proceeds of Insurance Policies 1 and 2 to Trust B. Finally, an extension of time until the date that is 60 days after the date of this letter is granted for: (i) Spouse to enter into the Agreement To Roll Over Annuity Payments described in §20.2056A-4(c)(7); and (ii) for the executor of Decedent's estate to file the Information Statement described in §20.2056A-4(c)(5) and the Agreement To Roll Over Annuity Payments with the Internal Revenue Service.

The election with respect to the joint property should be made on a Supplemental Form 706 filed with the Internal Revenue Service Center, Cincinnati OH 45999. The Information Statement and Agreement to Roll Over Annuity Payments should be attached to the Supplemental Form 706. A copy of this letter should also be attached to the return. A copy is enclosed for that purpose.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

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This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures:

Copy of this letter
Copy of this letter section 6110 purposes

cc: